

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE: SMITH & NEPHEW	:	MDL: 2775
BIRMINGHAM HIP RESURFACING	:	Master Docket No. 1-17-md-2775
(BHR) HIP IMPLANT PRODUCTS	:	
LIABILITY LITIGATION	:	JUDGE CATHERINE C. BLAKE
	:	
PATRICK HEALY & LORI HEALY,	:	DIRECT-FILED SHORT FORM
	:	COMPLAINT
Plaintiffs,	:	PURSUANT TO CASE MANAGEMENT
	:	ORDER NO. 5
vs.	:	
	:	Civil Action No.: 1:21-cv-00003
SMITH & NEPHEW INC.,	:	
	:	
Defendant.	:	

SHORT FORM COMPLAINT

1. Plaintiff, Patrick Healy, states and brings this civil action in MDL No. 2775, entitled

In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation. Plaintiffs are filing this Short Form Complaint pursuant to CMO No. 5, entered August 3, 2017 by this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is a resident and citizen of Martins Creek, Pennsylvania and claims damages as set forth below.

3. Plaintiff's spouse, Lori Healy, is a resident and citizen of Martins Creek, Pennsylvania and claims loss of consortium damages as set forth below.

4. Federal jurisdiction is proper based on diversity of citizenship.

5. The Federal District in which Plaintiff's initial implant took place: District of New Jersey.

6. The Federal District in which Plaintiff's revision(s) surgeries took place: Eastern District of Pennsylvania.

7. Plaintiff brings this action:

X On behalf of [himself/herself].

FACTUAL ALLEGATIONS

8. On or about August 12, 2009, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's RIGHT hip.

9. Plaintiff's RIGHT BHR implant surgery was performed at St. Luke's Warren Hospital by Christopher Ferrante, M.D.

10. Plaintiff underwent medically indicated revision of the BHR hip implant on or about October 23, 2020. In addition to undergoing a total hip replacement revision, Plaintiff also has also undergone various other procedures in connection with the damages he sustained as a result of the BHR implant surgery, such as:

- (a) excision of right gluteal mass;
- (b) three hip debridements;
- (c) a right hip arthroplasty;
- (d) multiple incision and drainage procedures of the right hip;
- (e) Placement of an antibiotic spacer;
- (f) Revision procedures to the antibiotic spacer;
- (g) a hip washout procedure;
- (h) a hip prosthesis removal; and
- (i) vacuum assisted closure (VAC) of the wound on Plaintiffs right hip.

11. Plaintiff's revision surgery was performed by Dr. Gregory Krikor Deirmengian, M.D., at Rothman Institute on October 23, 2020.

12. Plaintiff suffered the following complications, injuries, and/or indications, some or all of which made revision surgery medical necessary: infection of prosthetic total hip joint, sepsis, group G streptococcus, and a lower extremity fracture. The Plaintiff's infection of the prosthetic total hip joint has caused him to suffer from spiking fevers which have necessitated emergent treatment as well as multiple operative procedures. The multiple surgeries and continuing infections of the prosthetic hip included multiple spacer replacements and spacer exchanges. The extensive injuries Plaintiff suffered as a result of the BHR hip implant have inflicted extensive chronic pain and suffering and, further, has confined Plaintiff to a wheelchair for approximately a three-year period. Plaintiff's injuries will require medical treatment and have left the Plaintiff with permanent injury, which injuries have resulted in a diminishment of functional capacity and incapacity in the performance of the duties of his employment, household chores, and recreational pursuits and further has caused the Plaintiff to suffer a loss of ability to enjoy the pleasures of life.

13. Plaintiff adopts the allegations of the Master Amended Consolidated Complaint ("MACC") filed August 4, 2017, and all amendments to the MACC.

ALLEGATIONS AS TO INJURIES

14. (a) Plaintiff claims damages as a result of (check all that are applicable):

- | | |
|-----------------|----------------------------------|
| <u>X</u> | INJURY TO HERSELF/HIMSELF |
| <u> </u> | INJURY TO THE PERSON REPRESENTED |
| <u> </u> | WRONGFUL DEATH |
| <u> </u> | SURVIVORSHIP ACTION |
| <u>X</u> | ECONOMIC LOSS |

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable):

[Cross out if not applicable.]

X LOSS OF SERVICES

X LOSS OF CONSORTIUM

15. Defendant, by its actions or inactions, proximately caused the injuries to Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

16. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

X COUNT I (strict products liability) (New Jersey)

X COUNT II (negligence) (New Jersey)

X COUNT III (strict products liability failure to warn) (New Jersey)

X COUNT IV (negligent failure to warn) (New Jersey)

X COUNT V (negligent misrepresentation) (New Jersey)

X COUNT VI (negligence per se) (New Jersey)

X COUNT VII (breach of express warranties) (New Jersey)

X COUNT VIII (manufacturing defect) (New Jersey)

X COUNT IX (punitive damages) (New Jersey)

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendant as follows:

1. For compensatory damages;
2. Punitive damages;
3. Pre-judgment and post-judgment interest;

4. Statutory damages and relief of the state whose laws will govern this action;
5. Costs and expenses of this litigation;
6. Reasonable attorneys' fees and costs as provided by law;
7. Equitable relief in the nature of disgorgement; and
8. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Respectfully submitted,

RUSSO LAW OFFICES, LLC

By: s/ARTHUR J. RUSSO
ARTHUR J. RUSSO, ESQ.

By: s/LUKE J. SOSTARECZ
LUKE J. SOSTARECZ, ESQ.

Attorneys for Plaintiffs
633 Belvidere Road
Phillipsburg, NJ 08865
(908)454-0806

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 4, 2021, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF. Notice of this filing will be sent by e-mail to all parties by operations of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

s/Luke J. Sostarecz

Attorney for Plaintiffs